

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.109 OF 2005
FROM
NOTICE OF MOTION NO.63 OF 2004
IN
SUIT NO.1098 OF 1999

B.D. Industries Limited Appellant

V/s.

ICICI Bank Ltd. & Anr. . . .Respondents

Mr.R.P. Lote for the Appellant.
Ms.Vijaya Gaikwad i/b M.K. Ambalal for Respondent
No.1.
Mr.Aditya Khanna for Respondent No.2.
Mr.S.A. Vichare, Officer of Court Receiver present.

CORAM : A.P. SHAH AND
S.J. VAZIFDAR, JJ.
DATED : 24TH FEBRUARY, 2005.

P.C. :

1. This is an Appeal filed by Appellant / Defendant No.1 against the order of the learned single Judge granting reliefs in terms of prayers (a) and (b) of the Notice of Motion.

2. By prayer (a), the Court Receiver is directed to sell by public auction or by private treaty the immovable properties referred to in Exhibit "A" of the

plaint and to pay over the net sale proceeds to the Plaintiff towards the satisfaction of the claim in suit. By prayer (b), the Court Receiver is directed to pay over to the Plaintiff an amount of Rs.16,97,199=50 ps. being the expenses incurred by the Plaintiff towards advertisements, insurance and security out of the sale proceeds lying deposited with the Court Receiver.

3. The suit is filed by the Plaintiff as a debenture trustee. There is no dispute about the suit claim which today is in excess of Rs.2,50,00,000/-. It is submitted on behalf of the Appellant/Defendant No.1 that the properties of Defendant No.1 already sold are of the value of over Rs.2,00,00,000/-. He submitted therefore that no further properties ought to be sold.

4. We are unable to accept the submission for the simple reason that admittedly other properties of the Appellant are also secured for repayment of the dues of various other secured creditors including Respondent No.2 i.e. State Bank of India. Admittedly the dues of all the creditors are far in excess of the value of the properties owned by the Appellant.

5. Further admittedly the manufacturing activities of the Appellant had come to an end since about 1994. The Appellant's factory has since then being closed.

6. In the circumstances, no purpose would be served by stalling the sale of the said properties. The suit is not merely for the benefit of ICICI Bank Ltd. but for the benefit of all debenture holders of whom ICICI Bank Ltd. is the debenture trustee.

7. In the circumstances, the Appeal is dismissed.